



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 10, 2003

Mr. G. Chadwick Weaver  
First Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR2003-3985

Dear Mr. Weaver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182542.

The Midland Police Department (the "department") received a request for the report for case number 9601199001. You claim that some of the information is excepted from public disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 ... .

Gov't Code § 552.022(a)(1). The submitted information consists of a completed report. Consequently, this information must be released unless it is confidential under other law or excepted from disclosure under section 552.108. You claim that the green highlighted

information is protected from disclosure under the informer's privilege. The informer's privilege, incorporated into the Public Information Act by section 552.101,<sup>1</sup> has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928); see also *Roviaro v. United States*, 353 U.S. 53, 59 (1957). The informer's privilege under *Roviaro* exists to protect a governmental body's interest. Therefore, the informer's privilege under *Roviaro* may be waived by a governmental body and is not "other law" that makes the information confidential under section 552.022. Open Records Decision No. 549 at 6 (1990). However, the informer's privilege is also found in Rule 508 of the Texas Rules of Evidence. The Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Thus, we will determine whether the information is protected under Rule 508. Furthermore, we will address your arguments under sections 552.101, 552.108, and 552.130 of the Government Code.

We begin by addressing whether the green highlighted information is protected under Texas Rule of Evidence Rule 508. Rule 508 provides, in relevant part:

(a) Rule of Privilege. The United States or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished, except the privilege shall not be allowed in criminal cases if the state objects.

Thus, an informer's identity is confidential under Rule 508 if a governmental body demonstrates that an individual has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation, and the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 508(c).

The department seeks to withhold the green highlighted information because it identifies the informer who assisted the department in an investigation pertaining to a narcotics offense. Unless an exception to the privilege applies, we conclude the department may withhold only the informer's name under Rule 508. See Tex. R. Evid. 508(c). The remaining green highlighted information does not identify the informer and must be released.

---

<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Next, the department asserts section 552.108(b)(1) excepts the blue highlighted information from public disclosure. Section 552.108(b) provides that an internal record of a law enforcement agency that is maintained for internal use is excepted from disclosure if “(1) release of the internal record or notation would interfere with law enforcement.” Generally, a governmental body claiming section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). This office previously held that release of routine investigative procedures, techniques that are commonly known, and routine personnel information would not unduly interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 216 at 4 (1978), 133 at 3 (1976). The department asserts the information reveals surveillance activities and mode of operation, and release of this information would aid the public in planning a crime so as to thwart an investigation and avoid detection. After reviewing the blue highlighted information, we conclude it consists of routine investigative procedures. Thus, the department may not withhold the information under section 552.108(b)(1).

The department also asserts a driver’s license number is confidential under section 552.130. Section 552.130 excepts from disclosure information relating to a driver’s license issued by an agency of this state. You must withhold the Texas driver’s license number under section 552.130. We note that the requestor has a special right of access to her brother’s driver’s license number under section 552.023 if she has a proper consent for release because section 552.130 was enacted to protect a person’s privacy. Gov’t Code §§ 552.023 (person’s authorized representative has special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person’s privacy interests), .229 (proper consent to release information under special right of access).

Lastly, the department seeks to withhold a social security number. Social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). You claim that the social security number contained in Exhibit B falls under the federal Social Security Act because it was obtained pursuant to section 411.086 of the Government Code. That provision contemplates rules that the Department of Public Safety (“DPS”) shall adopt in regard to requests for criminal history information. Section 411.086(b)(2) states that such rules “may require a person requesting criminal history information about an individual to submit to [DPS] one or more of the following: . . . (E) any known identifying number of the individual, including social security number . . . .”

While you state that the collection of social security numbers “by police officers helps establish identities of criminals,” you do not specifically state whether the department

obtained or maintained the social security number at issue in order to request criminal history information from DPS. Moreover, you do not inform us as to whether DPS actually requires or required the department to submit the social security number at issue in order to request criminal history information. We find that if the department obtained or maintains the social security number in order to request criminal history information from DPS, and if DPS actually requires or required the department to submit the social security number with its request for criminal history information, then the social security number is confidential under section 411.086 of the Government Code in conjunction with federal law.

In summary, the department may withhold the informer's name under Rule 508 of the Texas Rules of Evidence. The department must not release the Texas driver's license number unless the department receives the proper consent for release. Furthermore, the department must withhold the social security number only as required by federal law and section 411.086 of the Government Code. The department must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

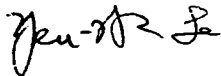
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673- 6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal limits. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 182542

Enc: Submitted documents

c: Ms. Rosario Flotte  
3109 Winfield  
Odessa, Texas 79764  
(w/o enclosures)